

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

NORTH TERRACE APARTMENTS, INC.
Springfield, Missouri

Respondent

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Docket No. TSCA-07-2004-0056

CONSENT AGREEMENT AND FINAL ORDER

Introduction

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is North Terrace Apartments, Inc., P.O. Box 771238, Coral Springs, Florida 33077-1238.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Specifically, Complainant alleges:

Allegations Pertaining to All Counts

1. North Terrace Apartments, Inc., is a Missouri corporation.
2. For all periods of time relevant to the violation alleged herein, North Terrace Apartments, Inc., owned a residential property located at 1646 E. North Street, Springfield, Missouri (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.

Count I - Failure to Provide Pamphlet
1646 E. North Street, Apt. 6A, Contract

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

5. In or around July 2002, Respondent entered into a rental agreement with Ashley Mitchell for the lease of the Property, Apt. 6A Contract, for residential use (the "Contract").

6. As a result of the Contract described in Paragraph 5 above, North Terrace Apartments, Inc., became the "lessor" and Ashley Mitchell became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.

7. Ashley Mitchell subsequently moved into the Property.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.
9. Respondent did not provide an EPA-approved lead hazard information pamphlet to Ashley Mitchell prior to being obligated under the rental Contract described in Paragraph 5 above.
10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Ashley Mitchell prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count II - Failure to Provide Pamphlet
1646 E. North Street, Apt. 7A, Contract

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

11. In or around April or June 2002, Respondent entered into a rental agreement with Gary Shultz for the lease of the Property, Apt. 7A Contract, for residential use (the "Contract").
12. As a result of the Contract described in Paragraph 11 above, North Terrace Apartments, Inc., became the "lessor" and Gary Shultz became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.
13. Gary Shultz subsequently moved into the Property.
14. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

15. Respondent did not provide an EPA-approved lead hazard information pamphlet to Gary Shultz prior to being obligated under the rental Contract described in Paragraph 11 above.

16. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Gary Shultz prior to being obligated under the rental Contract described in Paragraph 11 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count III - Failure to Provide Pamphlet
1646 E. North Street, Apt. 9A, Contract

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

17. In or around April or June 2002, Respondent entered into a rental agreement with Amanda Collins for the lease of the Property, Apt. 9A Contract, for residential use (the "Contract").

18. As a result of the Contract described in Paragraph 17 above, North Terrace Apartments, Inc., became the "lessor" and Amanda Collins became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.

19. Amanda Collins subsequently moved into the Property.

20. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

21. Respondent did not provide an EPA-approved lead hazard information pamphlet to Amanda Collins prior to being obligated under the rental Contract described in Paragraph 17 above.

22. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Amanda Collins prior to being obligated under the rental Contract described in Paragraph 17 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count IV - Failure to Provide Pamphlet
1646 E. North Street, Apt. 4A, Contract

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

23. In or around June 2002, Respondent entered into a rental agreement with April Hurt and Emily Miller for the lease of the Property, Apt. 4A Contract, for residential use (the "Contract").

24. As a result of the Contract described in Paragraph 23 above, North Terrace Apartments, Inc., became the "lessor" and April Hurt and Emily Miller became the "lessees," as those terms are defined by 40 C.F.R. § 745.103.

25. April Hurt and Emily Miller subsequently moved into the Property.

26. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

27. Respondent did not provide an EPA-approved lead hazard information pamphlet to April Hurt and Emily Miller prior to being obligated under the rental Contract described in Paragraph 23 above.

28. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to April Hurt and Emily Miller prior to being obligated under the rental Contract described in Paragraph 23 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

Count V - Failure to Provide Pamphlet
1646 E. North Street, Apt. 1A, Contract

The facts stated in Paragraphs 1 through 4 above, are herein restated and incorporated.

29. In or around February 2002, Respondent entered into a rental agreement with James Dancey for the lease of the Property, Apt. 1A Contract, for residential use (the "Contract").

30. As a result of the Contract described in Paragraph 29 above, North Terrace Apartments, Inc., became the "lessor" and James Dancey became the "lessee," as those terms are defined by 40 C.F.R. § 745.103.

31. James Dancey subsequently moved into the Property.

32. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

33. Respondent did not provide an EPA-approved lead hazard information pamphlet to James Dancey prior to being obligated under the rental Contract described in Paragraph 29 above.

34. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to James Dancey prior to being obligated under the rental Contract described in Paragraph 29 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of Four Thousand Nine Hundred Dollars (\$4,900) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondent understands that its failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Four Thousand Nine Hundred Dollars (\$4,900) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Deanna Smith
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred
as a result of this matter.

RESPONDENT:
NORTH TERRACE APARTMENTS, INC.
SPRINGFIELD, MISSOURI

Date Nov. 13, 2003

By Michael Oliver
MICHAEL OLIVER PRESIDENT
Print Name Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 12/22/03

By William A. Spratlin
William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date 12/24/03

By Becky Ingrum Dolph
Becky Ingrum Dolph
Deputy Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

James B. Gulliford
~~Robert J. Patrick~~
~~Regional Judicial Officer~~
James B. Gulliford
Regional Administrator
Date 12/31/03

IN THE MATTER OF North Terrace Apartments, Inc., Respondent
Docket No. TSCA-07-2004-0056

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

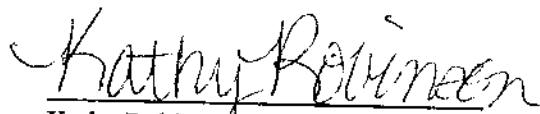
Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael Oliver, President
North Terrace Apartments, Inc.
P.O. Box 771238
Coral Springs, Florida 33077-1238

Dated: 1/2/04


Kathy Robinson
Regional Hearing Clerk